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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**OAKLAND BULK & OVERSIZED
TERMINAL, LLC,**

Plaintiff,

v.

CITY OF OAKLAND, ET AL.,

Defendants.

Case No. 3:16-cv-07014-VC

**NOTICE OF MOTION AND MOTION
OF THE STATE OF CALIFORNIA, BY
AND THROUGH XAVIER BECERRA,
ATTORNEY GENERAL, TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT
OF DEFENDANTS**

Date: January 10, 2018
Time: 10:00 a.m.
Court: No. 4, 17th Floor
Judge: Honorable Vince Chhabria

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the State of California, by and through Xavier Becerra, Attorney General, hereby moves the Court for leave to file an amicus curiae brief in the above-captioned case in support of Defendants. A copy of the proposed amicus brief is attached as an exhibit to this motion. Defendant City of Oakland has consented to and supports the filing of the

1 amicus brief. Defendant-Intervenors Sierra Club and San Francisco Baykeeper consented to the
 2 filing of the Amicus Brief. Plaintiff OBOT declined to consent.

3 District courts have wide discretion to grant leave to participate as amicus curiae. *Hoptowit*
 4 *v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (*abrogated on other grounds by Sandin v. Conner*,
 5 515 U.S. 472 (1995)). This discretion is liberally applied when the legal issues in a case “have
 6 potential ramifications beyond the parties directly involved.” *NGV Gaming, Ltd. v. Upstream*
 7 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). The Ninth Circuit has
 8 described the “classic role” of an amicus to include “assisting in a case of general public interest.”
 9 *Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm’n.*, 801 F.2d 1120, 1125 (9th Cir. 1986).

10 In the absence of specific rules governing amicus appearances at the district court level,
 11 district courts may look to the rules governing amicus participation in appellate courts. *See Ass’n*
 12 *of Am. Physicians & Surgeons, Inc. v. Brown*, No. 2:16-cv-02441-MCE-EFB, 2017 WL 4351766,
 13 at *2 (E.D. Cal. Sept. 29, 2017) (granting motion for leave to file as amicus curiae pursuant to
 14 Fed. R. App. P. 29). In federal appellate courts, states may file amicus curiae briefs as of right.
 15 Fed. R. App. P. 29 (“a State may file an amicus-curiae brief without the consent of the parties or
 16 leave of court”).

17 The State of California has an interest in both the subject matter and legal implications of
 18 the controversy currently before this Court. This case raises issues of environmental justice. The
 19 City of Oakland’s Ordinance No. 13385 is a health and safety regulation intended to protect some
 20 of its most at-risk residents from increased pollution from the handling of coal. The California
 21 Environmental Protection Agency has designated West Oakland as a disadvantaged community
 22 based on an analysis of environmental and socioeconomic factors. *Oakland Br.*, Dkt 145, at 14.
 23 Further, the California Air Resources Board has found that concentrations of air pollution in West
 24 Oakland are far higher than Bay Area averages. See attached Brief of Amicus Curiae at 4. The
 25 proposed loading and unloading of coal and petcoke at the Oakland Bulk & Oversized Terminal
 26 (“OBOT”) threatens to exacerbate the already degraded air quality in this area. *Id.*

27 The State of California also has a number of statutes and initiatives seeking to protect
 28 environmental justice communities that are subject to excessive levels of pollution. For instance,

1 SB 1000, now codified in Government Code section 65302 requires that each city or county
 2 include in its general plan an environmental justice element to identify objectives and policies to
 3 reduce the unique or compounded health risks in disadvantaged communities. Thus, the State
 4 seeks to weigh in on this matter of public interest because it has the potential to undermine the
 5 ability of local governments to protect their most vulnerable communities.

6 In addition, the State has an interest in offering its perspective on the Constitutional and
 7 federal preemption issues implicated by the present matter. California has created and
 8 implemented many environmental policies and initiatives that face frequent challenges on the
 9 grounds of federal preemption and the dormant Commerce Clause. Thus, California has an
 10 interest in ensuring that the courts construe the preemption and Commerce Clause doctrines in a
 11 manner that will protect the general police powers which reserve the protection of health, safety
 12 and the environment to states and municipalities. The State therefore submits the attached brief
 13 in order to assist the Court in reviewing the Constitutional and federal preemption issues in this
 14 case in a manner that recognizes the significant State interests at stake.

15
 16 Dated: December 8, 2017

Respectfully submitted,

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25 /s/ Rose B. Fua
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